

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: INTEL CORPORATION
MICROPROCESSOR ANTITRUST
LITIGATION

)
) MDL Docket No. 05-MD-1717-JJF
)
)

**REPLY MEMORANDUM OF COHEN MILSTEIN HAUSFELD & TOLL, THE FURTH
FIRM, HAGENS BERMAN SOBOL SHAPIRO, AND SAVERI & SAVERI IN SUPPORT
OF THEIR APPLICATION TO BE APPOINTED INTERIM CLASS COUNSEL**

INTRODUCTION

The law firms of Cohen Milstein Hausfeld & Toll P.L.L.C., The Furth Firm L.L.P., Hagens Berman Sobol & Shapiro L.L.P., and Saveri & Saveri, Inc. (the “CFHS firms”) submit this brief reply to National Plaintiffs Group's Response in Opposition to the San Francisco Group's Motion for Appointment as Interim Lead Counsel (Feb. 7, 2006) (“WH Response”; D.I. 32).¹ The CFHS firms address the WH Group's two primary points, which were also made in their memorandum in support of their interim class counsel motion (“WH Mem.”; D.I. 24): (1) that the plaintiffs represented by the CFHS firms and their supporters do not have standing to assert claims under the laws of eight states (WH Mem. at 19-22; WH Response at 4-5); and (2) that four co-lead counsel are too many (WH Mem. at 16-19; WH Response at 5-7).² These arguments are without merit. As further discussed below:

¹ The CFHS firms refer to the self-styled “National Plaintiffs’ Group” as the “WH Group.” This is a neutral term that reflects the fact that the group seeks to have Wolf Haldenstein appointed as sole lead counsel.

The WH Group refers to the CFHS firms as the “San Francisco Group” even though only two of the firms are based in San Francisco, while the other two are based in Seattle, Washington (with offices in other cities) and Washington, D.C. (with offices in other cities). As reflected in the CFHS firms’ application, all four firms have been involved in antitrust and other consumer protection class action litigation in federal courts throughout the country. Moreover, the CFHS firms are acting on behalf of over 40 firms, with offices situated across the country, representing over 60 plaintiffs from over 20 states. Thus, the CFHS firms and their constituents, as well as the plaintiffs they represent, are no less national in scope than the firms making up the WH Group.

²The CFHS firms do not address the many *ad hominem* attacks of the WH Group, but are certainly prepared to do so if the Court so desires.

- Where the plaintiffs live is irrelevant because the Court will appoint lead *counsel*, not lead *plaintiffs*.
- A four-way leadership structure is at least as efficient as a single lead firm, especially in a case of this magnitude.

ARGUMENT

I. AT ISSUE ARE THE QUALIFICATIONS OF PLAINTIFFS' COUNSEL, NOT THE NUMBER OR LOCATION OF THEIR CLIENTS.

The WH Group places great emphasis on who they represent in this litigation. That is a red herring. Whomever is selected to lead this case for the class action plaintiffs will do so for *all* such plaintiffs, including those represented by the WH Group. In other words, if the WH Group's clients solve the asserted standing problem, they do so no less if the CFHS firms are appointed interim class counsel. The Court is selecting lead *counsel*, not lead *plaintiffs*.

In any event, the CFHS firms do not agree that standing requires that there be a plaintiff from each "indirect purchaser" state. For example, a nationwide class of indirect purchasers may be able to sue solely under California law, given that Intel and its chief competitor, Advanced Micro Devices, Inc. ("AMD"), are both headquartered in California. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 241-45, 110 Cal.Rptr.2d 145, 160-62 (2001), *review denied*; *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 615-17, 236 Cal.Rptr. 605, 609-11 (1987). If so, such a class would not require representation by plaintiffs from each indirect purchaser state. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 240 & nn.5 & 6, 246-52 (D. Del. 2002) (Robinson, C.J.), *aff'd*, 391 F.3d 516 (3d Cir. 2004) (nationwide class represented by consumers from four states and third party payors from five states).

Moreover, even in class actions seeking to apply multiple states' laws, courts have not required that there be a representative from each state involved, and there is certainly no reason for plaintiffs to concede that issue. *See, e.g., In re Relafen Antitrust Litig.*, 221 F.R.D. 260, 267-

70 (D. Mass. 2004) (holding that California and Massachusetts residents could represent class members in California, Massachusetts, Vermont and, for some claims, Tennessee); *Mowbray v. Waste Management Holdings, Inc.*, 189 F.R.D. 194, 195, 199, 202 (D. Mass. 1999), *aff'd*, 208 F.3d 288, 299 (1st Cir. 2000) (holding that Illinois plaintiff could represent class members with similar claims arising under the laws of California, Georgia, Pennsylvania, Maryland, Michigan, New York, Texas, Virginia and Wisconsin); *Nichols v. Smithkline Beecham Corp.*, 2005 WL 950616 (E.D. Pa. Apr. 22, 2005) (permitting eight named plaintiffs to represent a class suing under the laws of 41 states and the District of Columbia) (attached as Exhibit A).

The geographic dispersion of the class action plaintiffs is not relevant to the Court's selection of class counsel.

II. FOUR CO-LEADS ARE NOT TOO MANY, ESPECIALLY GIVEN THE SIZE OF THIS LITIGATION.

The WH Group's objection to a four-way leadership structure is based on the assumption that such a structure is inherently less efficient than a single lead firm. However, there is no basis for that assumption.

This is a very large antitrust case. Intel's chief counsel was quoted in the *New York Times* as saying that, given the number of documents and witnesses involved, "[w]e believe this will be one of the largest pieces of litigation in U.S. history." *New York Times*, September 2, 2005, Section C, p.2, attached hereto as Exhibit B. Similarly, AMD's recent letter to the Court describes the scope of discovery in this litigation as "daunting." The letter details how millions of pages of documents will be produced and hundreds of depositions likely will be taken to properly prepare this case for trial. Letter to Hon. J. Farnan, Jr. from F. Cottrell, III, Esq., dated Feb. 13, 2006 ("Cottrell Ltr."; D.I. 35) at 1-2. Clearly, many lawyers will need to work on this case for the class action plaintiffs. There is no reason to believe that this case will be more efficiently litigated if these numerous lawyers work for one firm rather than multiple firms.

In any event, the WH Group concedes that these class actions are too big to be handled by a single firm. Their solution is to form an “*ad hoc* law firm” consisting of many plaintiffs’ firms. WH Mem. at 17 n.15; WH Response at 6 n.12. But nowhere does the WH Group explain why multiple firms will work together any more efficiently simply because the WH Group calls them a single *ad hoc* firm.

The WH Group also overlooks the incentive of class counsel to work efficiently. If, as the law of this Circuit provides, *In re Cendant Corp. Prides Litig.*, 243 F.3d 722, 734 (3d Cir. 2001), class counsel are paid as a percentage of the recovery, the fewer hours they take to achieve a particular result, the better off they are. The CFHS firms will work efficiently, not only to move the case ahead aggressively for the benefit of the putative class and to avoid wasting the Court’s and the parties’ time and resources, but also in furtherance of their own self interest.

The WH Group would have the Court believe that most courts choose just one or two co-lead firms. WH Response at 1-2. That is simply not the case. Four or more co-lead counsel often have been appointed in antitrust class actions, including smaller and less complex cases than this *Intel* litigation, and including at least one case in which Wolf Haldenstein is one of four co-lead counsel.³

The CFHS firms can and will work together and with other co-counsel efficiently, while amassing sufficient resources to aggressively litigate this large-scale antitrust case.


³ See, e.g., *In re Graphite Electrodes Antitrust Litig.*, MDL No. 1023 (E.D. Pa.); *In re Polyester Staple Antitrust Litig.*, MDL No. 1516 (W.D.N.C.); *In re Pressure Sensitive Labelstock Antitrust Litig.*, MDL No. 1556 (M.D. Pa.); *In re High Pressure Laminates Antitrust Litig.*, MDL No. 1368 (S.D.N.Y.); *In re Polypropylene Carpet Antitrust Litig.*, MDL No. 1075 (N.D. Ga.); *In re Cotton Yarn Antitrust Litig.*, MDL No. 1622 (M.D.N.C.); *In re Urethane Antitrust Litig.*, MDL No. 1616 (D. Kan.); *Gulf Coast Fence Co. v. Davis Walker Corp. (Chain Link Fence Antitrust Litig.)*, Civ. No. 87-2443 (D. Md.); *In re Carbon Black Antitrust Litig.*, MDL No. 1543 (D. Mass.); *In re Sulfuric Acid Antitrust Litig.*, MDL No. 1536 (N.D. Ill.) (in which WH is one of four co-leads); *In re Microsoft Corp. Antitrust Litig.*, MDL No. 1332 (D. Md.) (appointing nine-member Lead Counsel Committee); *In re Publication Paper Antitrust Litig.*, MDL No. 1631 (D. Conn.).

CONCLUSION

Under proper Rule 23(g) analysis, lead counsel should be chosen here based on their experience, knowledge and resources to manage this very large, complex, expensive and cutting-edge antitrust action. In the words of AMD, lead counsel for this litigation must have "demonstrated ability to assemble and lead a network of experienced law firms and to field and deploy collaboratively a very deep bench," as well as "demonstrated antitrust competence in very complex cases." Cottrell Ltr. at 2. The CFHS firms clearly have these qualifications. We therefore respectfully submit that the CFHS firms' application for appointment as interim class counsel should be granted.

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Dated: February 14, 2006

CERTIFICATE OF SERVICE

I, David W. Gregory, hereby certify that on this 14th day of February, 2006, the foregoing Reply Memorandum of Cohen Milstein Hausfeld & Toll, The Furth Firm, Hagens Berman Sobol Shapiro and Saveri & Saveri in Support of Their Application to be Appointed Interim Class Counsel was served on counsel for the following parties as indicated below:

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